APPENDIX A — OPINION OF THE COURT OF APPEALS OF THE STATE OF NEW YORK DATED AND DECIDED MAY 10, 2001

STATE OF NEW YORK
COURT OF APPEALS

No. 59

Ulster Home Care Inc., et al.,

Respondents,

v.

Dennis C. Vacco, as Attorney-General
of the State of New York,

Appellant.

OPINION

* * *

SMITH, J.:

Effective January 1, 1994, the New York State Department of Social Services ("DSS") amended the Medicaid regulation setting reimbursement rates for providers of personal care services. The amended regulation states:

> "(1) Medical assistance payments to personal care services providers for any rate year beginning on or after January 1, 1994, are made at the lower of the following rates:

> "(i) *the rate the provider charges the general public for personal care services*; or
>
> "(ii) the rate determined by the department in accordance with [a cost-based methodology]"

(18 NYCRR 505.14[h][7][ii][a][1] [emphasis added]). The primary issue here is whether "the rate the provider charges the general public for personal care services" is unconstitutionally vague. We conclude that it is not.

This case arose in 1997 during a Statewide audit and investigation by the Attorney General's Medicaid Fraud Control Unit (MFCU) of home health care agencies providing personal care services to Medicaid recipients. MFCU concluded that plaintiff Ulster Home Care had overcharged Medicaid for personal care services by approximately $600,000. MFCU concluded that instead of billing Medicaid at the DSS-determined rate (subdivision [ii] of the regulation), Ulster should have billed Medicaid at the rate it charged the general public for personal care services (subdivision [i]), which was the lower of the two rates. MFCU also concluded that Ulster had attempted to conceal the overcharges by overstating the amounts it charged its private-pay patients.

The Attorney General sought to bring criminal fraud and larceny charges before a grand jury. In May 1998, plaintiffs[1]

1. Plaintiffs James Mahoney and Diane Wiegand, executives at Ulster Home Care who also would have been implicated for overcharging Medicaid, were permitted to intervene in the action.

commenced this civil action for declaratory and injunctive relief alleging its contract with Ulster County precluded the Attorney General from replacing the reimbursement rate contained in its contract with a "public charge" rate. The action also sought to enjoin the Attorney General from enforcing the regulation, from demanding the payment of any sums based upon it and from imposing any criminal or civil liability upon the plaintiffs based upon said regulation.[2]

Supreme Court denied plaintiffs' motion for summary judgment in its entirety. The Appellate Division reversed, determining that the regulation was facially invalid because the terms "general public" and "rate" were not defined and no standards for their application were established (268 AD2d 59, 66). Following an award of attorneys' fees at Supreme Court, the Attorney General appealed to this Court from the judgment of Supreme Court pursuant to CPLR 5601(d). We now reverse.

Before this Court, the Attorney General contends that the Appellate Division erred by permitting a facial challenge rather than requiring plaintiffs to demonstrate that they could not understand the regulation and by granting summary judgment on the limited record before it.

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2. On June 9, 1998, plaintiff Ulster was granted a preliminary injunction restraining the Attorney General from prosecuting it during the pendency of the action. By order entered on July 15, 1998, the Attorney General was found in civil contempt of the June 9 order in that he had proceeded to seek an indictment against Ulster. The Appellate Division affirmed the grant of the preliminary injunction and the finding of contempt (255 AD2d 273). This prior order does not necessarily affect the judgment here and thus is not brought up for review.

Appendix A

A statute, or a regulation, is "unconstitutionally vague if it fails to provide a person of ordinary intelligence with a reasonable opportunity to know what is prohibited, and it is written in a manner that permits or encourages arbitrary or discriminatory enforcement" (*People v Foley*, 94 NY2d 668, 681; *People v Nelson*, 69 NY2d 302).

Neither the term "general public" nor "rate" as used in the regulation is so vague that it could not be understood by a person of ordinary intelligence or could be arbitrarily enforced. The challenged language has a common understanding and is used in other State Medicaid and Medicare regulations (*see, e.g.*, 8 NYCRR 247.15[c][1]; 10 NYCRR 86-1.21[d]; 18 NYCRR 415.69[e][2]; *see also*, 38 CFR 17.55[h] [Federal regulations of medical use of hospitals by veterans]; 42 CFR 413.9[a] [Federal regulation of cost reimbursement to providers in the Medicare program]). The limited application of this regulation to home personal care providers who elect to enroll in the Medicaid program and who expressly agree to adhere to its rules, coupled with the ample opportunity these providers had to understand the requirements of the Medicaid program, are further reasons to reject the argument that the public charge provision is impermissibly vague. Plaintiffs should have been required to show that the regulation was unconstitutional as applied to them. When a person's conduct falls within the proscriptions of a regulation, "a vagueness challenge must be addressed to the facts before the court" (*Nelson, supra*, 69 NY2d, at 308); (*see also, People v Rubin*, __ NY2d __ [decided today]).

Moreover, plaintiffs were not subject to prosecution because they allegedly violated the public charge regulation. Rather, the intended charges were grand larceny and offering

false instruments for filing. The alleged violation of the regulation was only an element of proof of these crimes and violation of the regulation alone, without a knowing attempt to deceive or defraud, could not support criminal liability (*see*, *United States v Larm*, 824 F2d 780 [9th Cir] [once a trier of fact determines that a person understood a regulation when it was allegedly violated, a subsequent challenge to the regulation for ambiguity is irrelevant so long as the person is actually convicted of violating a statute that provides adequate notice of the conduct proscribed]). On this separate basis, it was error to enjoin plaintiffs' criminal prosecutions (*see also*, *Bryson v United States*, 396 US 64, 68 [in a proceeding to vacate defendant's conviction based on a statute that was repealed following his conviction, the Court stated that "a claim of unconstitutionality will not be heard to excuse a voluntary, deliberate and calculated course of fraud and deceit. One who elects such a course as a means of self-help may not escape the consequences by urging that his conduct be excused because the statute which he sought to evade is unconstitutional"]).

Accordingly, the judgment appealed from and the order of the Appellate Division brought up for review should be reversed with costs and the case remitted to Supreme Court for further proceedings in accordance with this opinion.

Judgment appealed from and order of the Appellate Division brought up for review reversed, with costs, and case remitted to Supreme Court, Ulster County, for further proceedings in accordance with the opinion herein. Opinion by Judge Smith. Chief Judge Kaye and Judges Ciparick, Wesley and Altman concur. Judges Levine, Rosenblatt and Graffeo took no part.

Decided May 10, 2001

APPENDIX B — OPINION OF THE COURT OF APPEALS OF THE STATE OF NEW YORK IN *PEOPLE v. RUBIN* DATED AND DECIDED MAY 10, 2001

STATE OF NEW YORK
COURT OF APPEALS

No. 60

The People &c.,

Appellant-Respondent,

v.

Daniel Rubin,

Respondent-Appellant.

OPINION

* * *

SMITH, J.:

The People appeal from an order of the Appellate Division that reversed defendant's conviction for grand larceny in the second degree (Penal Law § 155.40) and six counts of offering a false instrument for filing in the first degree (Penal Law § 175.35). Defendant cross-appeals from the same order to the extent that it affirmed his conviction of two counts of offering a false instrument for filing.

Appendix B

Defendant, the principal owner and operator of Allstate Home Care, Inc., a Dutchess County home care services agency, was charged with defrauding the State of New York of approximately $620,000 by billing Medicaid for sums between $13.35 and $15.20 per hour for personal care services when he knew a Department of Social Services regulation limited him to the same hourly rate charged to the general public (the "public charge" provision). Defendant was convicted of second degree grand larceny for stealing in excess of $50,000 (count one). He was also convicted of eight counts of offering a false statement for filing: six counts (two through seven) were for filing specific bills which falsely stated that they were consistent with applicable regulations, one (count eight) was for certifying falsely that his cost to the general public during 1994 was $15.25, and one (count nine) was for certifying in a 1995 cost report that the salaries of two employees of another business he owned were attributable to health care services.

The primary issue before us is whether the public charge provision of the Medicaid reimbursement regulation (18 NYCRR 505.14[h][7][ii][a][1]) is unconstitutionally vague as applied to him. The first seven counts of defendant's conviction were all grounded on violation of this provision of the regulation, which reads:

> "(1) Medical assistance payments to personal care services providers for any rate year beginning on or after January 1, 1994, are made at the lower of the following rates:

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"(i) the rate the provider charges the general public for personal care services; or

"(ii) the rate determined by the department in accordance with [a cost-based methodology]."

The Appellate Division reversed the convictions of the first seven counts and affirmed the convictions of counts eight and nine. A Judge of this Court granted leave to appeal to the People and to the defendant.

Before this Court, the People argue that defendant was properly found guilty of grand larceny and of offering a false instrument for filing by significantly overcharging Medicaid and knowingly misrepresenting that his Medicaid billings were compliant with the public charge regulation. The People further contend that the Appellate Division properly affirmed the convictions on counts eight and nine. Defendant maintains that the regulation is unconstitutionally vague and that the convictions on counts one through seven were properly reversed. He also contends that the evidence was legally insufficient to convict him of counts eight and nine.

Relying on its rationale in the companion case, *Ulster Home Care v. Vacco*, which struck down the regulation as unconstitutional on its face, the Appellate Division concluded that "there is nothing with which defendant need be in compliance and he therefore cannot be guilty of false certification in that regard" (271 AD2d 759). We reversed the Appellate Division in *Ulster*, concluding that the regulation was facially valid (*see*, *Ulster Home Care v. Vacco*, __ NY2d __ [decided today]).

Appendix B

When a person's conduct falls within the proscriptions of a regulation, "a vagueness challenge must be addressed to the facts before the court" (*People v. Nelson*, 69 NY2d 302, 308). As applied to defendant, it is clear that the public charge regulation is not vague.

There was evidence at trial that defendant understood the public charge regulation and yet created schemes to conceal his violation of it. Defendant, for example, promulgated two separate price schedules, one that was accurate and the other, kept hidden, that was designed and used to defraud Medicaid. Moreover, in 1995 and 1996, defendant instructed his staff to tell everyone other than Medicaid officials that the public rate for personal care services was approximately $12 per hour but to inform Medicaid officials that the rate was $15.25.

The People also adduced at trial that defendant had received letters from the Department of Social Services explaining that the public charge regulation restricted Medicaid payment for personal care services to the rate charged the general public. Defendant understood the regulation to mean that the private-pay rate had to be higher than that paid by Medicaid, and that he had developed a fictitious private-pay rate schedule of $15.25 per hour which no member of the general public was asked to pay. Despite these and other infractions each year from 1995 through 1997, defendant attested that he understood the regulations and that his health care facility complied with applicable State regulations. The public charge provision is, thus, not impermissibly vague as applied to defendant.

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As the trial court noted, the People used the public charge regulation to prove the "manner" in which defendant committed larceny and defrauded the government. Defendant was not convicted solely of a violation of the regulation. Defendant had adequate notice of and understood the regulation and had the intent to contravene it. These were all triable issues which the jury resolved against defendant and served as the basis for his fraud and larceny convictions.

The evidence of defendant's guilt of counts eight and nine was legally sufficient.

Accordingly, the order of the Appellate Division should be modified by reinstating the conviction of defendant on counts one through seven of the indictment and remitting the case to the Appellate Division, for consideration of the facts and issues raised but not determined on the appeal to that court, and, as so modified, affirmed.

* * * * * * * * * * * * * * * * *

Order modified by reinstating the conviction of defendant on counts one through seven of the indictment and remitting to the Appellate Division, Third Department, for consideration of the facts and issues raised but not determined on the appeal to that court and, as so modified, affirmed. Opinion by Judge Smith. Chief Judge Kaye and Judges Ciparick, Wesley and Altman concur. Judges Levine, Rosenblatt and Graffeo took no part.

Decided May 10, 2001

APPENDIX C — OPINION AND ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, THIRD DEPARTMENT DATED, DECIDED AND ENTERED APRIL 13, 2000

SUPREME COURT — APPELLATE DIVISION
THIRD DEPARTMENT

Decided and Entered: April 13, 2000

85666

ULSTER HOME CARE INC. et al.,

Appellants,

v

DENNIS C. VACCO, as Attorney-General of the State of New York,

Respondent.

OPINION AND ORDER

Calendar Date: January 14, 2000

Before: Cardona, P.J., Peters, Carpinello, Graffeo and Mugglin, JJ.

* * *

Appendix C

Carpinello, J.

Appeal from an order of the Supreme Court (Torraca, J.), entered July 13, 1999 in Ulster County, which denied a motion by plaintiff Ulster Home Care Inc. for summary judgment.

Plaintiff Ulster Home Care Inc. is the operator of a licensed home care agency enrolled in the Medicaid program and provides personal care services to eligible Medicaid recipients pursuant to a contract, renewed annually, with the Ulster County Department of Social Services, which is responsible for various administrative aspects of the Medicaid program in Ulster County (*see*, Social Services Law §§ 365, 365-a[2][d]; §§ 367-j, 367-k, 367-n, 367-p). Although Medicaid clients account for a majority of its revenue, Ulster Home also provides personal care services to non-Medicaid clients. The charges for services to non-Medicaid clients can be paid in a variety of ways, i.e., by third-party payor sources, such as health maintenance organizations, health insurance companies and non-Medicaid State agencies, or directly by the client (this latter category is often referred to as the self-pay clients).

In April 1997, Ulster Home was the subject of an audit and investigation conducted by the office of the Attorney-General through its Medicaid Fraud Control Unit (hereinafter MFCU). According to Ulster Home, its counsel met with members of MFCU's investigative staff in March 1998 and was advised that the focus of their investigation concerned 18 NYCRR 505.14(h)(7)(ii)(a), which provides that:

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(1) Medical assistance payments to personal care services providers for any rate year beginning on or after January 1, 1994, are made at the lower of the following rates:

(i) the rate the provider charges the general public for personal care services; or

(ii) the rate determined by the department in accordance with [a cost-based methodology].

Specifically, Ulster Home was advised that MFCU's investigation revealed that it should have been reimbursed pursuant to subdivision (i) of the regulation (hereinafter the public charge portion of the regulation), as opposed to subdivision (ii) of the regulation (the cost-based methodology), because the rate it charged the "general public" was lower than the rate established by the former Department of Social Services (hereinafter DSS).[1] At this time, an overpayment of nearly $1.2 million was apparently being sought.[2] Thereafter, MFCU limited its finding to the

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1. The Department of Social Services was dissolved in 1997 and its functions were distributed, as relevant to this case, to the Department of Health (*see*, L 1997, ch 436). Nevertheless, reference to the Department of Social Services will be made in this decision even though, in certain contexts, it might be more precise to refer to the Department of Health.

2. Ulster Home was previously reimbursed at a rate of $13.36 per hour, this rate having been set by DSS based on the cost-based methodology. According to MFCU, it charged the "general public" $12.00 per hour. It is this differential that MFCU claims was overpaid to Ulster Home.

period May 1995 through mid-1997 and the recovery allegedly due the State was reduced to $675,000.

Alleging that Ulster Home's Medicaid billing practices were undertaken with the express purpose of enriching itself at the expense of the taxpayers and that Ulster Home knowingly lied to the State about its actual charges, MFCU seeks to prosecute it for larceny and offering a false instrument for filing. Faced with the prospect of criminal prosecution because of its alleged violation of the public charge portion of the regulation, Ulster Home commenced this action seeking declaratory and injunctive relief. Plaintiffs James Mahoney and Diane Wiegand, Ulster Home's Executive Director and Assistant Executive Director, respectively, were granted permission to intervene. On a prior appeal, this court affirmed an order of Supreme Court issuing a preliminary injunction against defendant enjoining the enforcement of the public charge regulation, as well as an order finding defendant in contempt of court (255 AD2d 73).

Following this court's decision, Ulster Home moved for summary judgment seeking a declaration that defendant's threatened prosecution violates the contracts between itself and Ulster County, that defendant should be prohibited from enforcing the public charge portion of the regulation on a retroactive basis, that defendant should be prohibited from demanding repayment of funds received by Ulster Home under its contracts with Ulster County and, most importantly, that defendant should be enjoined from attempting to impose any criminal or civil liability as a result of enforcement of the public charge portion of the regulation. Supreme Court denied the motion, prompting this appeal by Ulster Home.

Appendix C

Various *amici curiae* briefs have been submitted in support of Ulster Home's position.

To fully understand the nature of this action, a brief overview of the Medicaid reimbursement program with respect to personal care services is necessary. From the inception of the personal care services program through 1994, providers such as Ulster Home had been reimbursed at rates they negotiated with social service districts around the State. This methodology resulted in negotiated payment rates which did not necessarily reflect a provider's actual costs, lacked uniformity from district to district and placed an additional administrative burden upon social service districts (i.e., negotiating payment rates) (*see*, NY Register, Oct. 13, 1993, at 43). Pursuant to the Laws of 1990 (ch 53), DSS was directed to submit to the Legislature and the Governor a plan containing criteria for the establishment of a rate-setting methodology for personal care services (*see also*, L 1993, ch 59, § 61; L 1992, ch 41, § 3). The goal of the Legislature at this time "was to require [DSS] to develop a rate setting methodology for personal care services that considers personal care services providers' *actual costs* of providing services to [Medicaid assistance] recipients" (NY Register, Oct. 13, 1993, at 44 [emphasis supplied]). Pursuant to this legislative authority, DSS promulgated regulations establishing a new methodology by which payment rates for personal care services provided on or after January 1, 1994 would be calculated. The regulation changed not only the method by which these rates would be established but also changed the entity responsible for establishing such rates (*see*, 18 NYCRR 505.14[h][7]).

Consequently, under the revised regulatory scheme, payment rates were no longer based on district negotiated rates; rather, they were determined by DSS based upon the methodology defined in 18 NYCRR 505.14(h)(7)(ii) and approved by the Division of Budget (*see*, NY Register, Oct. 13, 1993, at 45). Under the regulations, a provider with cost experience, like Ulster Home, reported its operating costs to DSS on a cost report, which, in turn, is used by DSS to establish that provider's rate (*see*, NY Register, Oct. 13, 1993, at 43). As previously noted, since 1994, DSS has calculated Ulster Home's rate during the relevant time period using this cost-based methodology.

In turning to our legal analysis, we reiterate, as strenuously emphasized by Ulster Home and the *amici curiae*, that a provider's approved Medicaid reimbursement rate is calculated by DSS, *not* the provider, and that the provider merely submits the required costs report to DSS (*see*, 18 NYCRR 505.14[h][7][i]). Once its rate is set, the provider submits bills to Medicaid for payment at the approved rate (*see*, 18 NYCRR 505.14[h][1]; 540.7). Thus, these parties argue that a gross injustice would result by criminalizing the conduct of a provider who bills Medicaid at a *DSS* promulgated and approved cost-based rate instead of "the rate" it charges the "general public". This concern is indeed compelling. Equally compelling, however, is the need on behalf of the public fisc to prosecute any provider who, although lacking the authority to *set* its reimbursement rates, submits false information to the State on, for example, a cost report in order to wrongfully obtain State funds.

Appendix C

We now address the heart of Ulster Home's complaint in this matter, namely, the constitutionality of the public charge portion of the regulation. Ulster Home claims, and we agree, that the public charge portion of the regulation is unconstitutionally vague. "A vagueness challenge to an administrative regulation raises the question of whether a reasonable person subject to the regulatory standard would comprehend what conduct was being prohibited" (*Matter of Choe v Axelrod*, 141 AD2d 235, 239). "[R]egulations must give 'sufficiently definite warning * * * when measured by common understanding and practices' * * * and articulate an objective standard which governs the exercising of the discretion and affords the possibility of meaningful judicial review" (*Matter of Slocum v Berman*, 81 AD2d 1014, 1015, *lv denied* 54 NY2d 602, *appeal dismissed* 54 NY2d 752 [citations omitted], quoting *United States v. Petrillo*, 332 US 1, 7-8; *see*, *People v New York Trap Rock Corp.*, 57 NY2d 371, 378). Indeed, the void-for-vagueness doctrine has been called " 'the first essential of due process of law' " (*People v New York Trap Rock Corp.*, *supra*, at 378, quoting *Connally v General Constr. Co.*, 269 US 385, 391). Here, in contrast to the exhaustive guidelines and standards promulgated by DSS for implementing the cost-based methodology (*see*, 18 NYCRR 505.14[h][7][ii][a][2]-[7]), *no* standards, guidelines or definitions were adopted under 18 NYCRR 505.14(h)(7)(ii)(a)(1)(i) defining what constitutes "*the rate* the provider charges" (emphasis supplied) for personal care services or what constitutes the "general public" (*cf.*, *Matter of Allen v Commissioner of Social Servs. of State of N.Y.*, 116 AD2d 35, 37).

Appendix C

We deal first with the "general public" aspect of the regulation. While providers like Ulster Home provide personal care services to individuals covered by Medicaid, they also provide these services to individuals covered under managed care programs, to State programs associated with child protective services, to members of health maintenance organizations, to persons with private health insurance and to those who self pay. Whether the term "general public" as used in the regulation includes *all* of these non-Medicaid recipients or some combination thereof is simply not clear. It is certainly not clear that "general public" only encompasses private, self-pay clients, the interpretation Ulster Home claims that MFCU has given to the term.

Internal DSS memoranda in the record confirm that the term "general public" is not defined anywhere in DSS regulations, policy statements or updates. Thus, to the extent that MFCU might argue that the term is limited to self-pay clients, neither the regulation itself nor its regulatory history confirms this standard. We also note that, in the context of personal care services, there is no prior "judicial construction of [the term] * * * [so as] to meet the requirements of the void for vagueness doctrine" (*People v First Meridian Planning Corp.*, 86 NY2d 608, 622).

Defendant repeatedly claims that the terms "general public" and "the rate" charged have well-established meaning in the Medicaid area. Curiously, however, the "well-established" meanings of these terms are not set forth. With respect to the definition of the "general public", defendant seems to advocate that it encompasses "the rest of the [non-Medicaid] world" but also contends that it encompasses

private, self-pay clients only.[3] These differing definitions notwithstanding, an internal DSS memorandum in the record reveals that it may interpret "general public" in the area of personal care service as *excluding* all "third party payors as well as facilities, institutions, and other [S]tate agencies" who have entered into contracts with providers. To be sure, defendant's repeated statements that the term has "a well-defined usage" without in any way specifying that usage, in conjunction with an inconsistent interpretation of the term by the very State agency charged with setting reimbursement rates, speak volumes about the depth of the controversy before this court and the vagueness of the regulation itself.

The public charge portion of the regulation also does not define "the rate" to be charged. Again, defendant claims that this term is also well defined in the Medicaid area yet no specific definition is ever provided, particularly in the area of personal care services. Moreover, no standards, guidelines or definitions were adopted relating to this term either. In this context, it is important to note that the Medicaid

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3. For example, defendant's brief states that "the regulations require that Medicaid patients be treated no worse than the man on the street who enters, seeks health care and pays 'out-of-pocket'. If the advertised — and actually charged — rate for this private, uninsured, self-pay patient is $12.00, Medicaid cannot be charged more." In another instance, however, the brief states: "[I]t is difficult to see what any 'guidelines' could add to a rule that plainly tells providers that their Medicaid compensation will never be any more than the rest of the world pays." The "rest of the world", in this passage, would plainly mean all non-Medicaid payors. Apparently, defendant's position seems to be that general public means whatever "group" of payors pays the *lowest* rate for personal care services, not the average blended rate of the entire non-Medicaid world.

rate set by DSS under the cost-based methodology for personal care services is a "blended rate". This means that the provider is reimbursed solely at one set hourly rate and no additional charges are allowed for mileage, transportation or supplies, nor is a provider allowed to charge a higher rate for services provided on a weekend or holiday. Rather, the rate set by DSS subsumes these types of additional costs, in addition to other administrative costs associated with a provider's participation in the Medicaid program, in the single approved hourly rate.

Non-Medicaid clients, on the other hand, might be charged for these items in addition to a base hourly rate for services. It is unclear under the public charge portion of the regulation if "the rate" to be charged means simply the base hourly rate charged to the "general public" or the base rate plus all other incidental charges, such as mileage, supplies, holiday differentials and the like.[4] Defendant appears to claim that the "rate charged" means the lowest hourly base rate charged to any payor group, which in this case happens to be the private, self-pay clients. Since this group of payors apparently makes up a very small percentage of the population in general (17%) and an even smaller percentage of Ulster Home's total revenue (7%), and since the hourly base rate is not the actual amount even this small group pays, the intent of the Legislature — to reimburse providers for *actual* costs — would be thwarted if a provider were reimbursed at the lowest possible base rate charged to the smallest percentage of clients.

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4. For example, it is not clear if "the rate" charged would be $12.00, assuming that this is the base hourly charge paid by a self-pay client, or $12.00 plus expenses paid by that client.

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In the absence of any guidance, we find that providers of personal care services were in fact "left to guess" (*Doe v State of New York*, 189 AD2d 199, 210; *see, Matter of Burke v Denison*, 218 AD2d 894, 896) the meaning of the public charge portion of the regulation and the effect it may have on them by submitting bills to Medicaid at a DSS approved cost-based rate (*cf., Matter of Burke v Denison, supra*; *Matter of Prusky v Webb*, 134 AD2d 718, 720-721). "Nor can the question be solved by resort to the established canons of construction that enable a court to look through awkward or clumsy expression, or language wanting in precision, to the intent of the Legislature" (*Connally v General Constr. Co.*, 269 US 385, 394, *supra*). Here, in promulgating the regulation, DSS was silent as to its construction of the public charge portion of the regulation. Thus, to construe the rate charged to the "general public" as meaning an average of all rates charged to non-Medicaid payors, or alternatively, the lowest rate charged to any given payor who had not entered into a contract with a provider "would be as likely to defeat the purpose of the Legislature [and DSS] as to promote it" (*id.*, at 394). Thus, in the specific context of the personal care services industry, we are constrained to find that the rate charged to the "general public", in the absence of guidance or definition, is standardless (*see, City of Chicago v Morales*, 527 US 41; *see also, People v New York Trap Rock Corp.*, 57 NY2d 371, *supra*). Accordingly, we grant the petition to the extent that it seeks to have the public charge portion of the regulation declared unconstitutional. To be sure, this declaration is limited to the public charge portion of the regulation only (i.e., 18 NYCRR 505.14[h][7][ii][a][1][i]) and the remainder of the regulation remains intact.

Cardona, P.J., Peters, Graffeo and Mugglin, JJ., concur.

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ORDERED that the order is reversed, on the law, without costs, motion granted and it is declared that 18 NYCRR 505.14(h)(7)(ii)(a)(1)(i) is unconstitutional.

ENTER:

[stamp] /s/ Michael J. Novack
Michael J. Novack
Clerk of the Court

APPENDIX D — MEMORANDUM AND ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, THIRD DEPARTMENT IN *PEOPLE v. RUBIN* DATED, DECIDED AND ENTERED APRIL 13, 2000

SUPREME COURT — APPELLATE DIVISION
THIRD DEPARTMENT

Decided and Entered: April 13, 2000

11181

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

v.

DANIEL RUBIN,

Appellant.

MEMORANDUM AND ORDER

Calendar Date: February 16, 2000

Before: Cardona, P.J., Mercure, Crew III, Peters and Mugglin, JJ.

* * *

Crew III, J.

Appeal from a judgment of the Supreme Court (Czajka, J.), rendered May 14, 1999 in Albany County, upon a verdict

convicting defendant of the crimes of grand larceny in the second degree and offering a false instrument for filing in the first degree (eight counts).

Defendant, the president of a licensed home care agency that provides personal care services to eligible Medicaid recipients, was indicted and charged with one count of grand larceny in the second degree and 10 counts of offering a false instrument for filing in the first degree stemming from the submission of allegedly false claims to Medicaid. The basis for counts one through seven was that defendant allegedly had sought reimbursement for personal care services rendered at a higher rate than charged to the general public in violation of 18 NYCRR 505.14(h)(7)(ii)(a)(1)(i). Following a jury trial, defendant was found guilty of the crimes charged in counts one through nine of the indictment and thereafter sentenced to an aggregate indeterminate term of 4⅔ to 14 years in prison and a fine of $50,000.[1] Additionally, defendant was ordered to pay restitution in the amount of $620,237.80. Defendant now appeals.

Defendant argues that his convictions of the crimes charged in counts one through seven of the indictment must be reversed inasmuch as the regulation serving as the basis for the alleged fraud is unconstitutionally vague. We agree (*see*, *Ulster Home Care v Vacco*, __ AD2d __ [decided herewith]). Defendant was charged with fraudulently certifying his compliance with 18 NYCRR 505.14(h)(7)(ii)(a)(1)(i). Inasmuch as we have held that regulation to be unconstitutional,

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1. Counts 10 and 11 were dismissed prior to trial on motion of the People.

there is nothing with which defendant need be in compliance and he therefore cannot be guilty of false certification in that regard.

With regard to counts eight and nine, defendant concedes that they are unrelated to the constitutionally infirmed regulation but asserts that there must be a reversal of each count because the evidence was legally insufficient and the verdict was against the weight of the evidence. We disagree. Based upon the record evidence, there clearly are valid lines of reasoning and permissible inferences that could lead a rational person to the conclusion reached by the jury here (*see*, *People v Bleakley*, 69 NY2d 490, 495). Likewise, viewing the record evidence in a neutral light and according deference to the jury's assessment of the witnesses, we cannot conclude that the jury failed to give the evidence the weight it should be accorded (*see*, *id.*, at 495). Defendant's remaining contentions are either academic in light of our decision regarding counts one through seven or are without merit.

Cardona, P. J., Mercure, Peters and Mugglin, JJ., concur.

ORDERED that the judgment is modified, on the law, by reversing so much thereof as convicted defendant of one count of grand larceny in the second degree and six counts of offering a false instrument for filing in the first degree; counts one through seven of the indictment are dismissed and the order of restitution is vacated; and, as so modified, affirmed.

ENTER:

Michael J. Novack
Clerk of the Court

APPENDIX E — DECISION AND ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF ULSTER DATED JUNE 21, 1999

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

Index No.: 98-1461

ULSTER HOME CARE, INC.,

Plaintiff(s),

– against –

DENNIS VACCO, in his capacity as Attorney General of the State of New York,

Defendant(s),

MOTION DATE July 8, 1999
RJI NUMBER 55-98-00833

PRESENT: HONORABLE JOSEPH P. TORRACA,
Supreme Court Justice

The following papers number 1 to 5 read on this motion

	PAPERS NUMBERED
Notice of Motion/Affidavit(s)	1,2
Answering Affirmation(s)	3
Replying Affidavit(s)	4
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Appendix E

Upon the foregoing papers, the request of Plaintiff, Ulster Home Care, Inc., for an order declaring that Defendant's actions to replace the reimbursement set-by contract with a "public charge" rate are in violation of the contract entered into between Plaintiff and Ulster County; prohibiting Defendant from enforcing the "public charge" regulation; prohibiting and enjoining the Defendant from demanding payment of any amounts received by Plaintiff under such contracts; and prohibiting and enjoining the Defendant from imposing criminal or civil liability against the Plaintiff, is denied in its entirety.

The key to the determination of this lawsuit is the interpretation of and the propriety of the Public Charge Regulation codified at 18 NYCRR 505.14(h)(7). The proofs offered by the parties in this regard are contrary and contradictory and, thus, raise issues which must be determined by the trial court.

This shall constitute the decision and order of the Court in this matter. All papers submitted on this motion are forwarded for filing to: TOBIN AND DEMPF, ESQS., 33 Elk Street, Albany, New York 12207

DATED: June 21, 1999
Kingston, New York

s/ Joseph P. Torraca
JOSEPH P. TORRACA
Justice of the Supreme Court

APPENDIX F — OPINION AND ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, THIRD DEPARTMENT DATED, DECIDED AND ENTERED APRIL 22, 1999

SUPREME COURT — APPELLATE DIVISION
THIRD DEPARTMENT

Decided and Entered: April 22, 1999

83571

ULSTER HOME CARE INC. et al.,

Respondents,

v

DENNIS C. VACCO, as Attorney-General of the State of New York,

Appellant.

OPINION AND ORDER

Calendar Date: February 11, 1999

Before: Cardona, P.J., Mikoll, Yesawich Jr., Carpinello and Graffeo, JJ.

* * *

Appendix F

Carpinello, J.

Appeals (1) from an order of the Supreme Court (Torraca, J.), entered June 9, 1998 in Ulster County, which, *inter alia*, granted a motion by plaintiff Ulster Home Care Inc. for a preliminary injunction and enjoined defendant from enforcing the "public charge" regulation on a retroactive basis, and (2) from an order of said court, entered July 15, 1998 in Ulster County, which found defendant in contempt of court.

Plaintiff Ulster Home Care, Inc. (hereinafter Ulster Home) is the operator of an Ulster County licenced home care agency enrolled in the Medicaid program. During the course of an audit and investigation conducted by the office of the Attorney General (hereinafter defendant), through the Medicaid Fraud Control Unit (hereinafter MFCU), it was alleged that Ulster Home had sought reimbursement for personal care services at a higher rate than charged to the general public, purportedly in violation of 18 NYCRR 505.14(h)(7)(ii). This regulation, which has consistently been referred to by Ulster Home as the "public charge" regulation, provides as pertinent here:

> (1) Medical assistance payments to personal care services providers for any rate year beginning on or after January 1, 1994, are made at the lower of the following rates:
>
> > (i) the rate the provider charges the general public for personal care services; or

> (ii) the rate determined by the department in accordance with [a cost-based methodology] (18 NYCRR 505.14[h][7][ii][a][1][i], [ii]).

Up until MFCU's investigation, Ulster Home provided services under a contract with Ulster County and was reimbursed for services rendered pursuant to the cost-based methodology.

When faced with the prospect of criminal prosecution because of its alleged violation of the public charge regulation (which would have automatically terminated it from the Medicaid program pursuant to 18 NYCRR 515.7), Ulster Home commenced this action seeking declaratory and injunctive relief. In its complaint, the constitutionality of the regulation was placed directly at issue. Specifically, Ulster Home sought to prohibit defendant or his agents from enforcing the public charge regulation on the ground that it was unconstitutionally vague and ambiguous. It also sought a declaration that prosecutorial actions in seeking to recover funds based upon the public charge limitation contravened the contract between itself and Ulster County.

On June 2, 1998, Supreme Court issued a preliminary injunction enjoining the enforcement of the public charge regulation or demanding repayment of any funds received by Ulster Home under its contract with Ulster County. The court held:

> Although it is true that the general rule is that equity will not enjoin criminal prosecutions, it is

> also true that where, as in this instance, the granting of a preliminary injunction is necessary for the protection of rights cognizable in equity and there is a danger of irreversible injury *as a result of prosecution* based on an invalid statute or administrative rule or order, such relief is available. Should [Ulster Home] be *prosecuted* as a result of the 'public Charge' regulation, immediate and irreparable injury and damage shall result to [Ulster Home] irrespective of the final outcome of the anticipated prosecution (emphasis supplied).

Notwithstanding the clear mandate of the order, MFCU submitted charges to a Grand Jury on June 23, 1998 and apparently obtained an indictment as Ulster Home's arraignment was scheduled for June 26, 1998. This conduct prompted Ulster Home to commence a contempt proceeding. Following a hearing, Supreme Court found defendant in civil contempt of the prior order. Thereafter, defendant commenced a CPLR article 78 proceeding in this Court seeking to prohibit Supreme Court's enforcement of both the order granting the preliminary injunction and the contempt order. This application was summarily denied on the ground that "writs of prohibition and mandamus do not lie to review appealable orders". In the interim, plaintiffs James Mahoney and Diane Wiegand, Ulster Home's Executive Director and Assistant Executive Director, respectively, were permitted to intervene in this action. Defendant now appeals from the order granting a preliminary injunction and the subsequent civil contempt order.

Appendix F

We address first the propriety of Supreme Court's order granting the preliminary injunction. Fundamentally, a preliminary injunction may be granted where a movant has established the likelihood of ultimate success on the merits, irreparable injury and a balancing of equities in his or her favor (*see, Aetna Ins. Co. v Capasso*, 75 NY2d 860, 862; *Doe v Axelrod*, 73 NY2d 748, 750), and a court's decision to grant same will not be disturbed absent an abuse of discretion (*see, Doe v Axelrod, supra*). Significantly, a preliminary injunction is intended to preserve the status quo during the pendency of the action (*see, Sforza v Nesconset Fire Dist.*, 184 AD2d 631, 632). The thrust of defendant's argument concerning the order granting the preliminary injunction is that Supreme Court simply lacked the authority to enjoin a criminal prosecution.[1] Specifically, defendant argues that a declaratory judgment in this case would run counter to the principle that jurisdiction over criminal matters rests solely in courts of law and may not be interfered with by courts of equity, citing *Reed v Littleton* (275 NY 150). Declaratory relief, however, is available in cases where the constitutionality or legality of a statute or regulation is in

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1. Noticeably absent from defendant's brief is any specific discussion or application of the elements necessary for a preliminary injunction or any argument that Supreme Court abused its discretion in granting same. Rather, the primary focus of the appeal from the preliminary injunction order is that Supreme Court lacked jurisdictional authority to enjoin a criminal prosecution. The failure to include any discussion or argument whatsoever concerning whether Ulster Home sufficiently established the requisite elements for a preliminary injunction warrants a conclusion that this issue has been abandoned (*see, e.g., Failla v Amodeo*, 225 AD2d 965, 967, n 3; *Rebh v Lake George Ventures*, 223 AD2d 986, 987; *Matter of Hiser v Hiser*, 175 AD2d 353, 354).

question and no question of fact is involved (*see, Dun & Bradstreet v City of New York*, 276 NY 198, 206; *see also, New York Foreign Trade Zone Operators v State Liq. Auth.*, 285 NY 272, 276; *Bunis v Conway*, 17 AD2d 207, *appeals dismissed* 12 NY2d 645, 882).

Indeed, as held by the Court of Appeals in *Reed v Littleton* (*supra*, at 153):

> Where administrative officials act under a statute which infringes the Constitution, or under rules or regulations that are invalid, a person may have the right to petition the court to determine the jural relations, and to have the invalidity of the statute rule, or regulation declared.

In *Reed v Littleton*, the statute at issue was "concededly valid" and the facts were in dispute and open to different interpretations. Here, where the constitutionality of the public charge regulation has been implicated, the nature and purpose of the regulation sought to be tested is not disputed and the only questions involved are those of law (*cf., id.*; *Snap 'N' Pops v Dillon*, 66 AD2d 219; *Toomey v Neenan*, 59 Misc 2d 787), "equity should not hesitate to define the rights of the parties" (*New York Foreign Trade Zone Operators v State Liq. Auth., supra*, at 278). Thus, we find no basis to disturb the order granting injunctive relief.

We next address the more serious issue before this Court; namely, whether, based on MFCU's actions, defendant was properly found to be in civil contempt. "To sustain a civil contempt, a lawful judicial order expressing an unequivocal

mandate must have been in effect and disobeyed * * * [and] the party to be held in contempt must have had knowledge of the order" (*McCain v Dinkins*, 84 NY2d 216, 226 [citations omitted]; *see*, *Matter of Department of Envtl. Protection of City of N.Y. v Department of Envtl. Conservation of State of N.Y.*, 70 NY2d 233, 240; *Matter of McCormick v Axelrod*, 59 NY2d 574, 583). It must further appear that the offending conduct has prejudiced the complaining party (*see*, *McCain v Dinkins*, *supra*). In our view, Supreme Court was justified in holding defendant in contempt.

First, Supreme Court's order could not have been any clearer in prohibiting the criminal prosecution of Ulster Home. Supreme Court explicitly found that enjoining criminal prosecution under the public charge regulation was necessary to protect Ulster Home's equitable rights and to avoid irreversible injury to it "*as a result of prosecution*" (emphasis supplied). Once this injunction was issued, MFCU was not without adequate legal options; it could have moved to reargue before Supreme Court (*see*, CPLR 2221), moved for a modification of the preliminary injunction from this Court (*see*, CPLR 5518) or applied for a stay of enforcement pending appeal (*see*, CPLR 5519[c]). Until judicial relief to stay or vacate the order was successfully obtained, defendant was duty-bound to honor it. This was not done.

In support of the conduct, two purported justifications are offered. First, it is claimed that defendant did not know that the injunction prohibited the enforcement of the public charge regulation. It is also claimed that the order was vague because of an obvious typographical error by Supreme Court

in its citation to the public charge regulation.[2] These contentions are patently without merit.[3] Upon review of the injunction papers and Supreme Court's order, this Court is left with no doubt whatsoever that defendant knew the substance of the preliminary injunction concerned the public charge regulation — 18 NYCRR 505.14(h)(7)(ii) — and the resulting order prohibited further prosecution pending resolution of the proceeding.

Nor did filing a notice of appeal from that order invoke the automatic stay provisions of CPLR 5519(a)(1), thereby cloaking defendant with legal protection from the subsequent contempt. We reject the claim that a good-faith basis existed to support indicting Ulster Home based on this statutory provision since there is recent decisional authority firmly establishing that no automatic stay is available by appealing — either as of right or by permission — from an order or judgment which prohibits certain conduct (*see*, *State of New York v Town of Haverstraw*, 219 AD2d 64, 65-66; *see also*, *Matter of Oliver v County of Broome*, 136 AD2d 793, 795).[4] As noted in *State of New York v Town of Haverstraw* (*supra*), a prohibitory injunction, which "operates to restrain the

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2. Instead of referring to 18 NYCRR 505.14(h)(7)(ii), the court referred to 18 NYCRR 505.14(h)(7)(i).

3. To this end, even if the order was somehow ambiguous, which it is not, defendant could have sought clarification from Supreme Court before presenting his case to the Grand Jury. He did not do so.

4. Significantly, defendant was a party in *State of New York v Haverstraw* (*supra*).

commission or continuance of an act and to prevent a threatened injury, thereby ordinarily having the effect of maintaining the status quo", is not automatically stayed under CPLR 5519(a)(1).

Fundamentally, the objectives of a preliminary injunction and the automatic stay provision of CPLR 5519(a)(1) are similar — to maintain the status quo pending resolution of an action and an appeal, respectively (*compare*, *Sforza v Nesconset Fire Dist.*, 184 AD2d 631, 632, *supra*; *Nassau Roofing & Sheet Metal Co. v Facilities Dev. Corp.*, 70 AD2d 1021, 1022, *with State of New York v Town of Haverstraw*, *supra*; *Matter of Oliver v County of Broome*, *supra*). To countenance defendant's position that CPLR 5519(a)(1) permitted a criminal prosecution to go forward in its ordinary course would hardly maintain the status quo and indeed make any decision in plaintiffs' favor in the underlying action barren. Moreover, the attempt to sidestep the holding of *State of New York v Town of Haverstraw* (*supra*) by characterizing Supreme Court's order as not "purely prohibitory" can charitably be characterized as unpersuasive.

Defendant's remaining contentions have been considered and rejected.

Appendix F

Cardona, P.J., Mikoll, Yesawich Jr. and Graffeo, JJ., concur.

ORDERED that the orders are affirmed, with costs.

ENTER:

[stamp] /s/ Michael J. Novack
Michael J. Novack
Clerk of the Court

APPENDIX G — DECISION AND ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, THIRD JUDICIAL DEPARTMENT ON MOTION DATED, DECIDED AND ENTERED SEPTEMBER 9, 1998

SUPREME COURT — APPELLATE DIVISION
THIRD JUDICIAL DEPARTMENT

Decided and Entered: September 9, 1998

Case #: 82669A
82669B

In the Matter of DENNIS C. VACCO, as Attorney-General of the State of New York,

Petitioner,

v

JOSEPH P. TORRACA, as Justice of the Supreme Court, Ulster County, et al.,

Respondents.

(And Another Related Proceeding.)

DECISION AND ORDER ON MOTION

Motion by petitioner for a stay pending determination of the proceedings and for further relief.

Appendix G

Motion by respondent Ulster Home Care Inc. for a stay pending determination of the proceedings.

Motion by respondents Ulster Home Care Inc. and Competent Care Inc. to dismiss the proceedings and for further relief.

Cross motion by respondents Diane Wiegand and James Mahoney to dismiss the proceedings.

Upon the papers filed in support of the motions and cross motion and the papers filed in response thereto, it is

ORDERED that the motion and cross motion to dismiss the proceedings are granted, without costs, upon the ground that writs of prohibition and mandamus do not lie to review appealable orders (*see*, *Matter of Branciforte v Spanish Naturopath Socy.*, 217 AD2d 619; *see also*, CPLR 7801[2]; *Matter of Veloz v Rothwax*, 65 NY2d 902). It is further

ORDERED that the motions for stays and for further relief are denied, without costs, as academic.

CARDONA, P.J., WHITE, SPAIN, CARPINELLO and GRAFFEO, JJ., concur.

ENTER:

[stamp] /s/ Michael J. Novack
Michael J. Novack
Clerk of the Court

APPENDIX H — DECISION AND ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF ULSTER DATED JULY 9, 1998

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

ULSTER HOME CARE, INC.,

Plaintiff(s),

– against –

DENNIS VACCO, in his capacity as Attorney General of the State of New York,

Defendant(s),

DECISION/ORDER

MOTION DATE June 29, 1998
RJI NUMBER 55-98-00833

PRESENT: HONORABLE JOSEPH P. TORRACA,
Supreme Court Justice

The following papers number 1 to 4 read on this motion

	PAPERS NUMBERED
Order to Show Cause/Affidavits	1,2
Answering Affirmations	3
Replying Affidavits	4

Upon the foregoing papers, the Court finds the Defendant in civil contempt of the Order of this Court dated June 2,

1998 in that the directive therein granting a preliminary injunction enjoining such Defendant from enforcing the "public charge" regulation codified at 18 NYCRR 505.14(h)(7)(i) on a retroactive basis. More specifically, Defendant violated this Court's order by seeking the indictment of Ulster Home Care, Inc. before a Grand Jury on June 23, 1998 in violation of the injunction in the aforesaid order.

Said Defendant and his agents may purge themselves from the aforesaid contempt by refraining from continuing with the aforesaid indictment be unsealing same and making the charges therein available to the public and, in brief, by refraining from proceeding any further with the aforesaid criminal proceedings until such time as the aforesaid injunction shall be removed by this Court.

In the event that the Defendant fails to purge himself as provided herein, the Defendant may apply ex-party to this Court upon proof by affidavit of Defendant's failure to purge himself and provided herein, for an order directing that the Defendant be punished for the aforesaid contempt.

This shall constitute the decision and order of the Court in this matter. All papers submitted on this motion are forwarded for filing to: TOBIN & DEMPF, ESQS., 33 Elk Street, Albany, New York 12207.

DATED: July 9, 1998
Kingston, New York

s/ Joseph P. Torraca
JOSEPH P. TORRACA
Justice of the Supreme Court

APPENDIX I — DECISION AND ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF ULSTER DATED JUNE 2, 1998

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

ULSTER HOME CARE, INC.,

Plaintiff(s),

– against –

DENNIS VACCO, in his capacity as Attorney General of the State of New York,

Defendant(s),

DECISION/ORDER

MOTION DATE May 28, 1998
RJI NUMBER 55-98-00833

PRESENT: HONORABLE JOSEPH P. TORRACA,
Supreme Court Justice

The following papers number 1 to 7 read on this motion

	PAPERS NUMBERED
Order to Show Cause/Affidavits	1,2
Answering Affirmations	3
Replying Affidavits/Surreply	4,7
Other: Memorandum of Law	5,6

Upon the foregoing papers, the motion of Plaintiff, Ulster Home Care, Inc., for a preliminary injunction is granted in its entirety.

Appendix I

Although it is true that the general rule is that equity will not enjoin criminal prosecutions, it is also true that where, as in this instance, the granting of a preliminary injunction is necessary for the protection of rights cognizable in equity and there is a danger of irreversible injury as a result of prosecution based on an invalid statute or administrative rule or order, such relief is available. Should the Plaintiff be prosecuted as a result of the "public Charge" regulation, immediate and irreparable injury and damage shall result to Plaintiff irrespective of the final outcome of the anticipated prosecution.

During the pendency of this action, Defendant, Dennis C. Vacco, Attorney General of the State of New York, is enjoined from enforcing the "public charge" regulation codified at 18 N.Y.C.R.R. 505.14(h)(7)(i) on a retroactive basis and is further enjoined from demanding payment of any amounts received by Plaintiff under its contract with the County of Ulster.

This shall constitute the decision and order of the Court in this matter. All papers submitted on this motion are forwarded for filing to: TOBIN & DEMPF, ESQS., 33 Elk Street, Albany, New York 12207.

DATED: June 2, 1998
Kingston, New York

s/ Joseph P. Torraca
JOSEPH P. TORRACA
Justice of the Supreme Court